

ORIGINAL

(20)
3-30-01
SCIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIAJOHN CHARLES KENNEY,
Plaintiff,

v.

JAKE MENDEZ, Warden, et al.,
Defendants.

Civil No. 1:00-cv-00-2143

May 7 Blawitt

(Hon. Judge Rambo, presiding)

FILED
HARRISBURG, PA

MAR 29 2001

MARY E. D'ANDREA, CLERK

Per ME Deputy ClerkBRIEF IN SUPPORT OF PRO SE PLAINTIFF'S
MOTION IN OPPOSITION TO DEFENDANTS' STAY
MOTION

COMES NOW PLAINTIFF, John Charles Kenney, acting pro se in the above captioned civil case. Kenney hereby files the instant Pro Se-Motion in opposition to stay the case. On February 26, 2001, Defendants took it upon themselves to file a motion to stay the case. Defendants filed their stay-motion while Kenney^{1/} was temporarily undergoing a psychological evaluation, per a Court Order deriving from an "entirely" separate pending criminal case. Hon. Judge McClure, Jr., had issued Kenney's Court Ordered Psych Eval., dated 1/4/01, at case no. 4: CR-99-0380 (M.D. Pa.).

^{1/} Defendants had filed to stay the case while Kenney was temporarily out of the jurisdiction attending his psychological evaluation in another state. Kenney had received a copy of Defendants' stay-motion while he was at Springfield, Missouri.

Plaintiff-Kennedy's,

Opposition Pro Se Brief

Page Two

Monday, March 26, 2001

Defendants had maliciously and sadistically beat Kennedy, with the intent to cause Kennedy great harm. The resulting physical injuries Kennedy sustained were "numerous." Kennedy still suffers emotional trauma deriving from this vicious attack upon him by Defendants. As a result, Kennedy on 11/28/00, initiated a Civil Rights Complaint, pursuant to 42 USC 1983, 28 USC 1331, 1343, and 42 USCA 1997e(e), as amended. Kennedy is suing each of the four defendants in their official and individual capacities. Kennedy is seeking four-million in monetary damages for the physical injuries defendants inflicted, and an additional four-million for the ongoing emotional trauma. (See Page 3 of Initial Complaint) (Complaint, dated 11/28/00 reflects the monetary sums sought). Kennedy's complaint was docketed by this Court on 12/12/00. Each of the named defendants were served via summons accordingly. (See Doc. 2 n.1, dated 12/22/00). Kennedy also on 12/22/00 has been granted leave to proceed in In Forma Pauperis.

Kennedy has met his initial burden by making out a prima facie case against defendants. Kennedy satisfies (the "Act"), as amended by proof of a qualifying injury. (See PLRA of Institutionalized Persons Act, 7(e), 42 U.S.C.A. 1997e(e)). Kennedy attached to his original complaint an Injury Assessment Sheet, dated 9/29/99 (reflects Kennedy's numerous physical injuries). Here Kennedy passes through the gateway provisions of the Act, thereby raising several genuine issues for trial.

Plaintiff-Kenney's

Opposition Prose Brief

Page-Three

Monday, March 26, 2001

Liberal Pleading Rule In Effect

This motion in opposition is governed by the U.S. Supreme Court's dictate of Haines v. Kerner, 404 U.S. 519, 520-21 (1972). Here Kenney must be given a "measure of tolerance." United States ex rel. Montgomery v. Brierley, 414 F.2d 552, 555 (3rd Cir. 1969).

DEFENDANTS' MOTION FOR A STAY SHOULD BE DENIED FOR THE FOLLOWING REASONS SET FORTH - BELOW

Chronologically, Kenney lists ten-reason why the Defendants should be denied a stay:

- 1) A stay in the instant case will only cause substantial and unnecessary delay in the civil proceedings;
- 2) Defendants reliance on excuses for a stay is frivolous and trivial, deeming such excuses as insubstantial;
- 3) Defendants' excuses for a stay are solely based on conclusory allegations, thus are insupportable;
- 4) Defendants filing for a stay are no doubt utilizing forestall tactics in the proceedings;
- 5) Defendants failed to advise the Court that Kenney is to be transferred out of state at the conclusion

Plaintiff-Kennedy's

Opposition Prose Brief

Page - Four

Monday, March 26, 2000

of his criminal case before the Hon. Judge McClure, Jr., at case no. 4: CR-99-0280 (M.D. Pa.); Therefore, a stay would result in irreparable harm to Kennedy, thereby, placing him at a "substantial disadvantage of trying participate in the proceedings from across country;

6) Kennedy's pending criminal case has absolutely no bearing whatsoever on the civil case at bar. There is nothing precluding the civil case from commencing on;

7) Defendants' stay-motion is a strategic deviation with anticipation that Kennedy be transferred out of the state of PA, after conclusion of his criminal case.

8) Defendants' scandalous move for a stay, is only a forestall tactic in hope to accumulate evidence from Kennedy's criminal trial to aid Defendants' civil case;

9) Thus, Kennedy's criminal case has recently been continued, until May 2001;

10) Defendants' motion for a stay is arbitrary, capricious, and vexatious. Defendants only reliance is prevarication.

CONCLUSION

After viewing the ten factors thoroughly, it can easily be inferred that defendants are trying to lead Kennedy down a tortuous path, a path away

Plaintiff-Kenney's

Opposition Prose Brief

Page-Five

Monday, March 26, 2001

from the case. Therefore, based upon these facts contained herein, That Defendants Motion for a stay should be denied with prejudice, because a stay will only prejudice plaintiff.

Respectfully submitted - requested,

Kenney # 05238-041

Mr. John Charles Kenney, prose
Register No. 05238-041
ALLENWOOD USP
P.O. Box 3000
White Deer PA 17887-3000

Phone: (570) 547-0963, ext. 6630

Dated: 3/26/01